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Faxed to Robin A. Hylton

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Faxed From Max Kusy

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Application/Control # 10/672,741

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Application/Control Number: 10/672,741
Art unit: 3727

RESPONSE TO DETAILED ACTION

Elections/Restrictions

1. After reviewing the written response to the application filed the applicant chooses to traverse to the position that the species, shown as being divided into Group A and Group B, are not patently distinct. Evidence of this lack of patentable distinction is the fact that the examiner separates the application into two species, Group A illustrated in figures 1-5 and Group B illustrated in figures 6-10, on the basis of mechanical form. Group A utilizes screw threads for both retaining the closure in the container and elevating the closure from the container. Group B utilizes an inclined plane on the interior of the container sidewall cooperating with a spline on the exterior of the closure sidewall for elevating the closure from the container. Comparing the "A" case having threads for elevating means with the "B" case having inclined surface/spline as the elevation means yields the obvious conclusion that the difference between them, is the mechanical device utilized for elevating the closure in each case, not a distinct or unique teaching.

Separate retaining means including a bead at the container opening and the periphery of the closure top panel is the same in both A and B Groups, further supporting the position that no patentable distinction exists between the species.

2. During a phone conversation on 02/23/05 with the examiner the applicant did not have the benefit of the written detailed action. At this time I wish to withdraw my provisional election made with traverse to prosecute the invention of Group A, claim 1-9. I elect to have all claims 1-19, as amended, omitted, or added forthwith, to be submitted for consideration.

Drawings

3. The feature in the claims that the "top surface has little or no projection above said container other end;" will be amended.

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Examination of the drawings reveals that the center of the closure top surface protrudes a fraction of its thickness above the container end and it slopes downwardly to its periphery

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where the top surface is below the container end. This change of wording, in the claims, is proposed as a remedy to overcome the objection to the drawings.

4. My reply is the same as in three (3) above.

5. I believe that what is described as a space or gap between the bottom of the closure skirt and the container neck on the right side of figure 4 is not present. Close examination of figure 4 will reveal that the section line for the container sidewall at this location may be what is being mistaken for interior surface of the sidewall. Note the bottom line of the two horizontal lines. This line terminates at the junction of the interior sidewall surfaces and can be seen to be above the section line. Hopefully, this explanation will overcome this objection to the drawings.

Other changes, omissions, and additions to the figures on the drawings were made.

Specification

6. I am in agreement with your suggestion that the title be more descriptive and have revised same to be Child Resistant Package with Palm Open Feature.

7. Thank you for pointing out the numerous errors I made in composing the abstract. The original abstract in this application is omitted and a new abstract is being submitted to overcome the stated objections.

8. The abstract has been amended to omit the word "means" and substitute language that is more descriptive is used in its place.

Claim Rejections-35 USC 112

9. Thank you for pointing out the limitations imposed by the phrase "consisting of" in claim 1, and lack of sufficient antecedent in claims 3 and 9. The amended claims will address these points in a manner such as to overcome the stated limitations and absence of antecedent basis.

10. No reply required

11. Claims 1-3, 5, and 7 being rejected under 35 U.S.C. 102(e) as being anticipated by Silk (US 2004/0262310) is challenged by the applicant as the art cited was filed (04/29/04) which is after the filing date (09/29/03) claimed by the applicant.